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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
Civil Action No. 08-1291

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DEC - 9 2009

JOEL SCHNEIDER  
U.S. Magistrate Judge

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In Regard to the Matter of:

Bayside State Prison  
Litigation

OPINION/REPORT  
OF THE  
SPECIAL MASTER

EDWIN RICHARDSON

-vs-

WILLIAM H. FAUVER, et al,  
Defendants.

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\* \* \* \*

THURSDAY, NOVEMBER 12, 2009

\* \* \* \*

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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5 Transcript of proceedings in the above  
6 matter taken by Theresa O. Mastroianni, Certified  
7 Court Reporter, license number 30X100085700, and  
8 Notary Public of the State of New Jersey at the  
9 United States District Court House, One Gerry Plaza,  
10 Camden, New Jersey, 08102, commencing at 3:44 PM.  
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25

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1 JUDGE BISSELL: I am now reopening  
2 proceedings in the case of Edwin Richardson, docket  
3 number 08-1291.

4 This opinion/report is being issued  
5 pursuant to the directives of the Order of Reference  
6 to a Special Master and the Special Master's  
7 Agreement and the guiding principles of law which  
8 underlie this decision to be applied to the facts  
9 upon which it is based as set forth in the jury  
10 instructions in the Walker and Mejias jury charges to  
11 the extent applicable to the allegations of Mr.  
12 Richardson.

13 As finalized after review under Local  
14 Civil Rule 52.1, this transcript will constitute the  
15 written report required under paragraph seven of the  
16 Order of Reference to a Special Master.

17 Mr. Richardson was housed in Trailer  
18 Number Four and he was extracted to the gym for the  
19 search of that trailer on August 1st, 1997.

20 Throughout his testimony there is a  
21 description of several assaults that he alleges  
22 occurred to him on that day. I'm not going to place  
23 upon this record any lengthy quotations. In summary,  
24 he alleges, one, that his face was slammed up against  
25 his locker during the strip search before his

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1 extraction for the trip to the gym, two, that he was  
2 hit and prodded on his way out of the unit, three,  
3 that he had beatings by several officers present in  
4 the West Sally Port and at Center on the way to the  
5 gym, (two separate instances on that occasion), four,  
6 that he was beaten in the back when he fell over in  
7 the gym because he was complaining of back pain at  
8 that location and, five, that he was beaten on the  
9 back and on his bed when he was returned to the unit  
10 and that beating was administered by Officer Adams.

11 Although there might be some inherent  
12 credibility with regard to items one, two and four of  
13 that litany, due to aggressive behavior by SOG to  
14 control inmates and punish non-conforming behavior,  
15 items three and five, namely the beatings at the West  
16 Sally Port and at Center and the beatings in the unit  
17 by Officer Adams are both inherently implausible and  
18 effectively rebutted. As such, those untruths cast  
19 substantial doubt on the truth of items one, two and  
20 four as well and eventually produce a failure of  
21 proof in toto.

22 Mr. Richardson has not satisfied his  
23 burden of proof by a preponderance of the credible  
24 evidence with regard to any of the alleged beatings  
25 which he says were inflicted upon him. Among other

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1 things, there was contrary evidence to that which he  
2 presented. Officer Adams testified and records  
3 reveal that he was not assigned to Trailer Number  
4 Four on any shift on August 1st of '97. Furthermore,  
5 he never assaulted Mr. Richardson at any time and has  
6 never been accused of inmate abuse at any time.

7 Furthermore, he testified (I find very  
8 credibly) at page 133 of the transcript of  
9 September 30th, that housing officers who had to live  
10 with these inmates on a daily basis, not only during,  
11 but after the lockdown, would have absolutely no  
12 incentive to beat inmates and acquire a reputation  
13 for the beating of inmates. Indeed, it was in their  
14 interest not to do so because of the fact that,  
15 unarmed, they were alone with large populations of  
16 inmates on a daily and hourly basis.

17 The description of the extent of the  
18 assaults that supposedly appeared at the West Sally  
19 Port and at Center, frankly, is absurd. There is,  
20 once again, no reason for one to make a determination  
21 that such conduct would occur in such public  
22 locations at the very outset of this lockdown with  
23 supervisory and, indeed, administrative personnel in  
24 all likelihood in a position to observe them. I find  
25 that's a fabrication.

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1                   As far as, once again, the question of  
2   him having been beaten upon his return to the unit,  
3   Officer DuBois testified that he was among the  
4   Bayside officers on the search team who would have  
5   remained in the dayroom upon the return of the  
6   prisoners to the unit. He saw nothing which  
7   indicated any assaults either before or after Mr.  
8   Richardson's return.

9                   The attitude of Mr. Richardson also has  
10   an impact on his credibility here. For instance, at  
11   locations in the transcript such as from page 97  
12   through 99 and also from pages 74 through 75 he made  
13   some stubborn assertions about the inaccuracy and  
14   falsehood of records and reports that frankly are not  
15   credible and indicate a belligerence or recalcitrance  
16   here that colors and casts significant doubt upon the  
17   accuracy and the truth of his testimony. There are  
18   other instances of that type of testimony appearing  
19   on pages 99 through 103. And I've already mentioned,  
20   once again, the absolutely implausible description of  
21   the events that supposedly took place at Center. It  
22   really does, indeed, color the accuracy of his entire  
23   testimony. Let me just read that excerpt at page  
24   112. This is during his cross-examination. Lines  
25   four through 20.

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1 "Question: I just want to draw your  
2 attention back to the alleged incident in front of  
3 the Center Unit. While this assault was allegedly  
4 taking place in front of the Center Unit, is it your  
5 testimony that no Bayside officers in the Center Unit  
6 came out and put a stop to this alleged assault?

7 "Answer: I didn't see anybody out  
8 there trying to stop anything.

9 "Question: And this assault in front  
10 of Center took place in daylight hours with, what  
11 you've testified to, with at least 20 to 25 other  
12 officers present, correct?

13 "Answer: As far as I could tell, yes.

14 "Question: And the alleged assault at  
15 the Sally Port, there were multiple officers involved  
16 in that as well, correct?

17 "Answer: Yes."

18 Once again, this is entirely  
19 implausible given all of the circumstances.

20 And so, based upon the inherent  
21 incredibility of such incidents as those recounted at  
22 the West Sally Port at Center, the refutation of  
23 allegations by Officer Adams, indeed, the  
24 establishment that he wasn't even at Trailer Number  
25 Four on the day when the assault is attributed to



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1 him, and Mr. Richardson's stubborn assertions with  
2 regard to the falsehood of documents and reports and  
3 the like which themselves are without credibility,  
4 his testimony as a whole basically is incredible  
5 and/or certainly does not rise to the level of  
6 establishing the proof of his charges by a  
7 preponderance of the credible evidence.

8 Finally, although not every item of  
9 evidence has been discussed in this opinion/report,  
10 all evidence presented to the Special Master was  
11 reviewed and considered.

12 For the reasons set forth above, I  
13 recommend in this report that the district court  
14 enter an order and judgment of no cause for action  
15 with regard to Edwin Richardson.


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## C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



Theresa O. Mastroianni, C.S.R.  
Notary Public, State of New Jersey  
My Commission Expires May 5, 2010  
Certificate No. XI0857  
Date: November 20, 2009

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